IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1688 OF 2005

Dattatray Hari Patil .. Petitioner

Versus

Smt.Sharada Dattatray Patil

and Anr. .. Respondents

Ms.Gauri Godse for petitioner

Mr.R.D.Suryavanshi for respondent No.1

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 4th October 2006.

P.C.

. Petitioner is aggrieved by an order passed by the Revisional Court reversing the

judgement of the trial court and allowing the application for maintainance preferred under section 125 of the Cr.P.C.

2. Petitioner is the husband whereas the first respondent is the wife.

3. It is not in dispute that she had filed an application for seeking maintainance under section 125 of Cr.P.C.

4. Upon that application the Second Joint J.M.F.C. Bhivandi delivered his judgement on 19th January 2004. In the judgement delivered by him in Misc.Application No.17 of 2003, he has framed the necessary points. The first point framed by him is whether the applicant wife (respondent No.2 herein) proves that she is refused maintainance and neglected by the opponent husband, despite having sufficient means. The finding on point No.1 is that insofar

as the means of husband are concerned, they are sufficient but the wife could not prove refusal and neglect on the part of husband to maintain her. However, on Point No.2 which reads "*Does the applicant prove that she is unable to maintain herself",* the finding of the trial court is in the affirmative. The third point framed is that whether she is entitled to maintainance from the petitioner husband and the answer is in the negative. Consistent with this finding, the application of the wife came to be dismissed.

5. Naturally, the applicant wife being aggrieved, invoked jurisdiction of Revisional Court to correct the errors apparent on the face of record and according to her, the perversity committed by the trial court. The learned Additional Sessions Judge, before whom the application was preferred, after elaborate discussion of the materials produced before the trial court held that the applicant has proved

that she is unable to maintain herself. He also held that it is not proved that the wife was living in adultery. Consistent with this finding, he allowed revision application, resulting in grant of maintainance in favour of wife to the tune of Rs.1000/- per month. The amount was to be paid from the date of Application before the trial court.

6. Aggrieved by this order and judgement, the petitioner husband has invoked jurisdiction of this Court under Article 227 of the Constitution of India read with section 482 of Cr.P.C.

7. Ms.Godse, appearing for petitioner submits that the Revisional Court has committed an ex facie error inasmuch as, once the evidence was led by the petitioner husband before the trial court pointing out that the wife was living in adultery with one Dnyaneshwar and that part of

the evidence and testimony of petitioner was supported by other witnesses, which remained unshaken, then, it is not for the Revisional Court to re-assess and re-appraise the material on record and come to different conclusion. That is not the purpose for which Revisional Jurisdiction is conferred. In that behalf, she relied upon two decisions of the Supreme Court in the case of Bakulabai and Anr. Vs. Gangaram and Anr. reported in (1988) 1 S.C.C. 537 and in the case of Deb Narayan Halder Vs. Anushree Halder (Smt), reported in (2003) 11 S.C.C. 303. She has taken me through the judgement of the trial court as also the Revisional Court and invited my attention to the discussion on the aspect of the respondent wife living in adultery. She submits that once there is admission of father of Dnyaneshwar, then, it is futile to contend that Dnyaneshwar and respondent No.1 wife are not staying as husband and wife. She submits that on a plain reading of the provisions, the liability

to maintain must come to an end if the wife is living in adultery. For an adulterous relation no sanctity or legitimacy is attached in law. In such a situation, the Revisional Court has committed a patent error. Its judgement is, therefore, vitiated and deserves to be set aside.

8. Assuming without admitting that the petitioner has failed to prove that the respondent wife is living in adultery yet, once the materials do not indicate any neglect or refusal on the part of the petitioner husband, then, the application was rightly rejected by the trial court. She submits that point No.1 framed by Revisional Court and the finding thereon is rendered without adverting to materials and, therefore, this is a fit case where this Court should step in and set aside the impugned order.

9. Mr.Suryavanshi, learned Counsel for respondent wife on the other hand submits that it

is not for this Court now to again re-appraise the materials or re-appreciate the same. He submits that merely because another view of the matter is possible, it is not permissible for this Court to step in. He has invited my attention to the provisions of section 125 and has contended that the phraseology of sub-section 4 of section 125 is that a wife is not entitled to receive an allowance for maintainance or interim maintainance and expenses of proceedings as the case may be, from her husband under section 125, if she is living in adultery or without any sufficient reason, she refuses to live with her husband or they are living separately with mutual consent. He submits that the words "living in adultery" being pressed in this case, they mean a continuous act. An isolated incident would not attract the embargo of sub-section 4 of section 125. In such circumstances, the Revisional Court has rightly held that the evidence on record is not that the

respondent wife is living in adultery. Therefore, he prays that the petition be dismissed.

10. I have perused the judgement of the Courts below with the assistance of learned Counsel for both sides. I have adverted to the points framed by the trial court. It is rather surprising that the trial court has after finding that the respondent No.1 wife is unable to maintain herself despite the husband having sufficient means, denies maintainance, because, there is no evidence of neglect or refusal on the part of husband. In this behalf, it is appropriate to note that the trial court has, as far as Point No.1 is concerned, observed that the husband's financial condition is sound and he is having sufficient means to maintain the respondent. However, the contention of the wife that the petitioner has refused and neglected to maintain her has not been accepted only on the

ground that the respondent wife did not examine anybody else except herself on this point. In my view, the trial court was in obvious error inasmuch as, it is not that the testimony of the wife has to be disbelieved straightaway because it is not corroborated. The purpose for which section 125 has been incorporated must be borne in mind. It is not as if the respondent wife is obliged to bring the materials of such nature as would independently prove refusal and neglect on the part of the husband. This is not the Rule in all cases. Ultimately, it must depend upon the facts of each case. The entire matter has been approached by the trial court in the backdrop of the plea of respondent wife living in adultery. It has observed that the evidence of respondent wife is scanty. But the trial court does not observe that it is totally unbelievable. On the other hand the emphasis appears to be on the aspect that she is living in adultery and therefore, does not deserve maintainance.

11. It is in such circumstances, that the Revisional Court has stepped in to correct an obvious error. The Revisional Court has adverted to all materials and has clearly held that the requirement of sub-section 4 of section 125 of the wife living in adultery has to be satisfied and proof in that behalf is lacking. The materials produced would show some sort of affinity or friendly approach or acquaintance or something more than acquaintance between Dnyaneshwar and respondent wife but as rightly pointed out by Mr.Suryavanshi, it is not sufficient to show that she is living in adultery. In fact, the criticism of Ms.Godse is that the observation that they are not staying as husband and wife is not sound in law. What the learned Judge had in mind possibly is that the proof of their staying together itself is lacking. What the statement of the father of Dnyaneshwar would indicate is that there was some

sort of relationship and he had no objection if that relation had continued. That such relations are in fact continuing is not observed by the trial court and on the same evidence, the Revisional Court had to step in and correct the error.

12. In such circumstances, I am unable to accept the contentions of Ms.Godse that the judgement of the Revisional Court is vitiated because it has over-stepped the limits in law. Reliance upon the Supreme Court decisions is misplaced. The observations therein have to be seen in the facts before the Supreme Court. On the materials produced before the Supreme Court, it had observed that the court proceeded on conjectures and surmises and not on evidence. The Revisional Court, when evidence is led and it finds that there is an error of law apparent on the face of the record, should while reversing that judgement, advert to the findings so also

the materials before the trial court in support thereof. If the same are not adverted to or discussed, then the judgement of the Revisional Court is bound to be vitiated. In the case before me, such is not the position. The Revisional Court, has adverted to all materials and after noticing the inconsistency in the findings recorded and hyper technical approach adopted in matters of award of maintainance, rightly stepped in.

13. In the above circumstances, the petitioner husband has failed to make out a case of perversity or error apparent on the face of record. The petitioner is thus disentitled from invoking the jurisdiction of this Court under Article 227 of the Constitution of India read with section 482 of Cr.P.C.

14. At this stage I must advert to the fact that on 19th August 2006, despite petitioner

being
directed to clear off the arrears of maintainance by an earlier order, I permitted him to deposit a sum of Rs.15,000/- without prejudice to the rights and contentions of both sides in the pending Matrimonial proceedings before the Civil Judge, Senior Division, Kalyan (Marriage Petition No.210 of 2000). That amount of Rs.15,000/- is deposited. Ms.Godse, however, contends that the Revisional Court has awarded maintainance of Rs.1000/- per month in favour of respondent No.1 wife, which is improper considering that the children from their wedlock are residing with husband and he is maintaining them. It is incorrect to allege that the petitioner has income from other sources including huge agricultural land. He is working as a Driver and earns a salary of Rs.2,500/- as per his deposition. Further he has pointed out that during the course of illness of the daughter, he had to spend considerable amount for treatment.

This is set out at para 4 of the further affidavit filed on 31st July 2006. This aspect was taken into consideration by me while reducing the deposit. However, the wife has now filed further affidavit and has sought to place on record the income of the petitioner husband from various sources, including Retail store. In my view, these further materials would justify, taking a overall view of the matter and at this stage, interest of justice would be sub-served, if the amount of Rs.1000/- is reduced to Rs.750/- per month. This would not prejudice parties from pleading their case before Matrimonial Court and for the said court to award alimony/maintainance in accordance with law. This would not even prevent the wife from applying for enhancement Future.

15. Since the amount of Rs.15,000/- is deposited the said amount is allowed to be withdrawn by respondent wife without prejudice to

her rights and contentions so also that of the petitioner husband in the matrimonial proceedings. The balance sum of maintainance at the rate of Rs.750/- from the date of application before the trial court shall be paid within eight weeks from today. Writ Petition is dismissed with the modification as above.

(S.C.Dharmadhikari, J)